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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/361,816

07/27/1999

SIMON ALEXANDER HANSON ROSE

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7590

10/04/2007

CIBA SPECIALTY CHEMICALS CORPORATION

PATENT DEPARTMENT

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EXAMINER

QAZI, SABIHA NAIM

ART UNIT

PAPER NUMBER

1616

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DELIVERY MODE

10/04/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/361,816

Applicant(s)

HANSON ROSE ET AL.

Examiner

Sabiha Qazi

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 7/30/07.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 12-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

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**Final Office Action**

Claims 12-21 are pending. No claim is allowed at this time.

**Summary of this Office Action dated Friday, August 31, 2007**

1. Information Disclosure Statement
2. Copending Applications
3. Specification
4. 35 USC § 112 --- First Paragraph Written Description Rejection
5. 35 USC § 102(b) Rejection
6. 35 USC § 103(a) Rejection
7. Response to Remarks
8. Conclusion
9. Communication

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### **Information Disclosure Statement**

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### **Copending Applications**

Applicants must bring to the attention of the examiner, or other Office official involved with the examination of a particular application, information within their knowledge as to other copending United States applications, which are "material to patentability" of the application in question. MPEP 2001.06(b). See *Dayco Products Inc. v. Total Containment Inc.*, 66 USPQ2d 1801 (CA FC 2003).

### **Specification**

The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

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**35 USC § 112 --- First Paragraph Written Description Rejection**

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 12-21 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Presently claimed invention is drawn to:

A soil treatment process comprising adding an aqueous soil treatment composition consisting essentially of:

- (a) An ionic water-soluble fertilizer in an amount of at least 10 weight percent,*  
*and*
- (b) A water-soluble anionic polymer which has the intrinsic viscosity of from 9-12 dl/g and is formed from water-soluble monomer blend comprising 60-80% anionic monomer and from 40 to 20% nonionic monomer, the composition having a viscosity of not more than 4,000 cps, to water, the composition being thereby diluted, and irrigating an area of soil with water.*

Applicant had no possession of the claimed subject matter at the time the application was filed. The data presented in the specification on pages 10-12 does not

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describe the invention as claimed. Applicant has no possession of the claimed subject matter at the time the invention was filed. The method steps as claimed are missing. Further claims are broad and contain an step of "an ionic water-soluble fertilizer in an amount of at least 10 weight percent", containing at least 10% of any ionic water soluble fertilizer. Further claim is drawn to (b) *a water-soluble anionic polymer which has the intrinsic viscosity of from 9-12 dl/g and is formed from water-soluble monomer blend comprising 60-80% anionic monomer and from 40 to 20% nonionic monomer, the composition having a viscosity of not more than 4,000 cps, to water, the composition being thereby diluted, and irrigating an area of soil with water.* Compounds containing intrinsic viscosity of from 9-12 dl/g and is formed from water-soluble monomer blend includes thousands of compounds having different chemical structures, different molecular weight and different chemical properties. Furthermore, ionic water-soluble fertilizer in an amount of at least 10 weight percent", containing at least 10% of any ionic water soluble fertilizer includes large number of compounds having different molecular weight, different structures and different chemical properties. It is impossible to determine the properties, for a wide range of different class of compound. Applicants had no possession of the subject matter as has been claimed. The written description requirement prevents applications from using the amendment process to update the disclosure in their disclosures (claims or specification) during the pendency before the patent office. Otherwise applicants could add new matter to their disclosures and date them back to their original filing date, thus defeating an accurate accounting of the priority of the invention. See 35 USC 132. The function of description requirement is to



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ensure that the inventor had possession, as of filing date of the application relied on, the specific subject matter claimed by him.

See *Genetech*, 108 F.3d 1361, 1365 (Fed. Cir. at 1366, 78, 1999).

The test for determining compliance with the written description requirement is whether the disclosure of the application as originally filed reasonably conveys to one skilled in the art that **the inventor had the possession at the time of the later claimed subject matter, rather than the presence or absence of literal support in the specification for the claimed language.** See *In re Kaslow*, 707 F.2d 1366, 1375 (Fed. Cir. 1983).

In the present case Applicant has no possession of method of the subject matter at the time the application was filed.

**GENERAL PRINCIPLES GOVERNING COMPLIANCE WITH THE "WRITTEN DESCRIPTION" REQUIREMENT FOR APPLICATIONS**

The first paragraph of 35 U.S.C. 112 requires that the "specification shall contain a written description of the invention \* \* \*." This requirement is separate and distinct from the enablement requirement. See, e.g., *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1560, 19 USPQ2d 1111, 1114 (Fed. Cir. 1991). >See also *Univ. of Rochester v. G.D. Searle & Co.*, 358 F.3d 916, 920-23, 69 USPQ2d 1886, 1890-93 (Fed. Cir. 2004) (discussing history and purpose of the written description requirement); *In re Curtis*,

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354 F.3d 1347, 1357, 69 USPQ2d 1274, 1282 (Fed. Cir. 2004) ("conclusive evidence of a claim's enablement is not equally conclusive of that claim's satisfactory written description").< The written description requirement has several policy objectives. "[T]he 'essential goal' of the description of the invention requirement is to clearly convey the information that an applicant has invented the subject matter which is claimed." *In re Barker*, 559 F.2d 588, 592 n.4, 194 USPQ 470, 473 n.4 (CCPA 1977). Another objective is to put the public in possession of what the applicant claims as the invention. See *Regents of the University of California v. Eli Lilly*, 119 F.3d 1559, 1566, 43 USPQ2d 1398, 1404 (Fed. Cir. 1997), *cert. denied*, 523 U.S. 1089 (1998). The written description requirement of the Patent Act promotes the progress of the useful arts by ensuring that patentees adequately describe their inventions in their patent specifications in exchange for the right to exclude others from practicing the invention for the duration of the patent's term.

To satisfy the written description requirement, a patent specification must describe the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention. See, e.g., >*Moba, B.V. v. Diamond Automation, Inc.*, 325 F.3d 1306, 1319, 66 USPQ2d 1429, 1438 (Fed. Cir. 2003);< *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d at 1563, 19 USPQ2d at 1116. However, a showing of possession alone does not cure the lack of a written description. *Enzo Biochem, Inc. v. Gen-Probe, Inc.*, \*\*>323 F.3d 956, 969-70,< 63 USPQ2d 1609, 1617 (Fed. Cir. 2002).

An applicant shows possession of the claimed invention by describing the claimed invention with all of its limitations using such descriptive means as words, structures, figures, diagrams, and formulas that fully set forth the claimed invention. *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565, 1572, 41 USPQ2d 1961, 1966 (Fed. Cir. 1997). Possession may be shown in a variety of ways including description of an actual reduction to

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practice, or by showing that the invention was "ready for patenting" such as by the disclosure of drawings or structural chemical formulas that show that the invention was complete, or by describing distinguishing identifying characteristics sufficient to show that the applicant was in possession of the claimed invention.

See MPEP 2163.06

**Claim Rejections - 35 USC § 102**

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 12-21 rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over HASHIMOTO et al. (US Patent 3,798,838). The reference discloses fertilization and irrigation of soil wherein the soils are contacted with the aqueous solution of a water soluble plant nutrient salt and an effective amount of a partially hydrolyzed polyacrylamide to reduce the permeability of the soil without rendering it impermeable to water flow.

5. The reference further discloses that water-soluble plant nutrients and partially hydrolyzed polyacrylamide exhibit a synergistic effect to decrease the water permeability of the soils. Furthermore it discloses that plants grow better in the treated soil and are more efficient in uptake of nutrients from the soil. It also discloses that "These discoveries can be used to conserve water and fertilizer and improve the

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efficiency of agronomy by connecting the soil with a solution having a concentration of from 0.001 to about 1 weight percent of a polyacrylamide having from 5 to about 80 percent of its amide groups hydrolyzed to carboxylic acid groups and from 0.001 to 5 weight percent of a water, plant nutrient salt". See the abstract of the invention.

Nutrients are fertilizer salts.

6. HASHIMOTO discloses a water-soluble polymer (polyacrylamide) and a nutrient in example 1. The reference also discloses that 12 to 45 percent of the amide groups are hydrolyzed to water soluble carboxylate groups in lines 1-6, column 3 which is the instant polymer. The amount of a polymer in water and a viscosity of 2 to 1,000 cPs are taught in lines 10-14 in column 4. Dissolution of a polymer in water is taught in lines 26-34, column 4. The viscosity of the polymer of HASHIMOTO such solution inherently possess the instantly recited intrinsic viscosity. A reference must be considered for all that is disclosed and must not be limited to its preferred embodiments or working examples.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

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Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**Claims 12-21 rejected under 35 U.S.C. 103(a) as being unpatentable over MILLER (EP 0586,911)**

**JP 51-124578 in view of WALLACE et al (US Patent 4,797,145) and HASHIMOTO et al (US Patent 3,798,838).**

**1. Determining the scope and contents of the prior art.**

The reference MILLER, EP '911 teaches a composition for the treatment of soil containing an anionic fertilizer and anionic polymer such as polyacrylamide and 97 to 0 mole percent of different water-soluble monomer or salts thereof. See the entire

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document especially lines 36-50 and lines 1-30 on page 3; lines 4-40, page 4; Tables, examples and claims. The composition is added to water prior to irrigating an area of soil. See claims 8 and 10.

WALLACE et al., US'145 teach an aqueous composition comprising a water-soluble polymer and fertilizer salts in examples. Various synthetic polymers and salts thereof are taught in lines 23-61, column 3. JP reference teaches an aqueous solution-form soil conditioning fertilizer comprising an acrylamide-potassium acrylate copolymer, which embraces the applicant's claimed invention. The reference also teaches that it is preferred to use the copolymer in an amount of about 0.001 to 0.05% by weight, based on the weight of the soil, but if desired, the copolymer may be used in a larger or smaller amount. See the entire document, especially Section 2 of Page 1, all Examples, and Claims.

WALLACE teaches calcium chloride. EP reference teaches soil modifiers.

**2. Ascertaining the differences between the prior art and the claims at issue.**

Instant claims differ from the reference in claiming the ranges of viscosities of the composition. The instant claims are drawn to water-soluble fertilizer.

**3. Resolving the level of ordinary skill in the pertinent art.**

MILER in EP '911 teaches gel composition and instant is aqueous composition. (The viscosity would be the same for anionic polymer taught by EP '911). The reference teaches copolymers of acrylamide and acrylic acid, in ranges from 3 to 100 mole percent of acrylic monomer unit or salts and from 97 to 0 mole percent of other water-soluble monomer or salts. (see lines 38-45 on page 3). Useful polymers taught include polyacrylamide, copolymers of acrylamide and acrylic acid, polyacrylates. Examples 1-4 and 7 contain specific polymers of acrylamide and acrylic acid. One skilled in the art would be motivated to prepare the aqueous solution-form fertilizer as has been presently claimed because the prior art teaches the ranges in concentration and the amount of diluted fertilizer needed for soil aggregation. At the time of invention

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presently claimed invention would have been obvious to one skilled in the art because fJP reference teaches an aqueous solution-form soil conditioning fertilizer comprising an acrylamide-potassium acrylate copolymer, which embraces the applicant's claimed invention. The reference also teaches that it is preferred to use the copolymer in an amount of about 0.001 to 0.05% by weight, based on the weight of the soil, but if desired, the copolymer may be used in a larger or smaller amount.

WALLACE teaches various polymers wherein copolymers of acrylic acid and acrylamide are included. Concentration of polymers (lines 50-52, 0.1% by weight, column 4) and calcium chloride (line 61, column 6) are taught. Wallace teaches copolymers of acrylic acid or salts thereof. Wallace also teaches the use of calcium chloride, which is fertilizer, see line 61 in col. 6.

HASHIMOTO et al. US Patent 3,798,838) teaches a method of irrigation and fertilization. The reference teaches that partially hydrolyzed polyacrylamide exhibit a synergistic effect to decrease water permeability of the soils. Furthermore, the reference teaches that plants grow better in the treated soil and are more efficient in uptake of nutrients from the soil. These discoveries can be use to conserve water and fertilizer and improve the efficiency of agronomy by contacting the soil with a solution having a concentration of from 0.001 to about 1 weight percent of a polyacrylamide having from 5 to about 80 percent of its amide groups hydrolyzed to carboxylic acid groups and from 0.001 to 5 weight percent of a water soluble, plant nutrient salt (fertilizer salts).

It is known that a chemical compound and its properties for example viscosity, melting point, density etc. are inseparable to the compound). See *In re Spada*, 15 USPQ (2d) 1655, 1658.

**4. Considering objective evidence present in the application indicating obviousness or nonobviousness.**

One having ordinary skill in the art would be motivated at the time of invention to prepare beneficial composition and process by combining the teachings of the prior art for the improvement of soil because first HASHIMOTO teaches an aqueous composition comprising a water soluble polymer such as polyacrylamide and nutrient (example 1). It also teaches that 12 to 45 percent of the amide groups are hydrolyzed to water-soluble carboxylate groups (see lines 1-6, col. 3). The amount of polymer in water and the viscosity of 2 to 1,000 cPs (see lines 10-16, col. 4) and dissolution of a polymer in water is taught (lines 26-34, col. 4). The polymer of HASHIMOTO solution viscosity inherently possesses the instantly claimed intrinsic viscosity. See *In re Mills*, 477 F2d 649, 176 USPQ 196 (CCPA). (The reference must be considered for all it discloses and must not be limited to its preferred embodiments or working examples). Second At the time of invention presently claimed invention would have been obvious to one skilled in the art because first JP reference teaches an aqueous solution-form soil conditioning fertilizer comprising an acrylamide-potassium acrylate copolymer, which embraces the applicant's claimed invention. The reference also teaches that it is preferred to use the copolymer in an amount of about 0.001 to 0.05% by weight, based on the weight of the soil, but if desired, the copolymer may be used in a larger or smaller amount. Third the ratio and ranges would have been obvious to one skilled in the art because HOSHIMOTO and WELLACE teach the viscosities and ratios. There has been ample motivation provided by the prior art to prepare the composition as instantly claimed because it would have been obvious to select potential anionic polymers which includes acrylamide polymer and combine with the nutrients to achieve the composition use for the treatment of soil as taught by EP '911

In absence of any criticality and/or unexpected results instant invention is considered *prima facie* obvious to one skilled in the art.



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In the light of the forgoing discussion, the Examiner's ultimate legal conclusion is that the subject matter defined by the instant claims would have been obvious within the meaning of 35 U.S.C. 103(a).

### **Response to Remarks**

- The arguments were fully considered but are not found persuasive therefore rejection is maintained for the same reasons as set forth in the previous office action.
- Obviousness rejection is being made of combination of references. "One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references." In re Keller, 642 F.2d 413, 208 SPQ 871 (CCPA 1981); In re Merck & Co., Inc., 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). See MPEP 2145.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### **Communication**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sabiha Qazi, Ph.D. whose telephone number is 571-272-0622. The examiner can normally be reached on any business day.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter, Ph.D. can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



SABIHA QAZI, PH.D.  
PRIMARY EXAMINER